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**From:** Gude, Karen [Gude.Karen@epa.gov]  
**Sent:** 5/15/2020 2:20:10 PM  
**To:** Hurlid, Kathy [Hurlid.Kathy@epa.gov]  
**CC:** Chemerys, Ruth [Chemerys.Ruth@epa.gov]  
**Subject:** RE: Heads up for tribes on signature of FRN re consultation under ESA sec 7 on 404(g) program approval

Hi Kathy,

Perfect. Thanks so much for the additional information!

Happy Friday! Hope you have a wonderful weekend.

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**From:** Hurlid, Kathy <Hurlid.Kathy@epa.gov>  
**Sent:** Friday, May 15, 2020 10:17 AM  
**To:** Gude, Karen <Gude.Karen@epa.gov>  
**Cc:** Chemerys, Ruth <Chemerys.Ruth@epa.gov>  
**Subject:** RE: Heads up for tribes on signature of FRN re consultation under ESA sec 7 on 404(g) program approval

There is no outreach planned beyond the initial notices via email – that which is in the coms strategy. As for a letter, Mindy says just use the desk statement. She is happy to field any calls from associations if you want to refer them to her or you can field. I hope this helps.

BTW, no word yet on signature. Will let you know as soon as we know. Thanks.

Have a good weekend, Kathy

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**From:** Gude, Karen <Gude.Karen@epa.gov>  
**Sent:** Friday, May 15, 2020 9:12 AM  
**To:** Hurlid, Kathy <Hurlid.Kathy@epa.gov>  
**Cc:** Chemerys, Ruth <Chemerys.Ruth@epa.gov>  
**Subject:** RE: Heads up for tribes on signature of FRN re consultation under ESA sec 7 on 404(g) program approval

Perfect. Thanks, Kathy! It's appreciated.

Karen

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**From:** Hurlid, Kathy <Hurlid.Kathy@epa.gov>  
**Sent:** Friday, May 15, 2020 8:59 AM  
**To:** Gude, Karen <Gude.Karen@epa.gov>  
**Cc:** Chemerys, Ruth <Chemerys.Ruth@epa.gov>  
**Subject:** Re: Heads up for tribes on signature of FRN re consultation under ESA sec 7 on 404(g) program approval

Hi Karen, Ruth is off today. I'll check with Mindy, but I don't believe we are holding any outreach on this. As for additional language, I'll send what I think we are sharing with ECOS etc

Sent from my iPhone

On May 15, 2020, at 7:33 AM, Gude, Karen <Gude.Karen@epa.gov> wrote:

Hi Ruth,

Thanks so much for the heads up. I also received a copy of the desk statement and communications strategy (attached) from OW Comms yesterday afternoon. I'd be happy to send the announcement to the tribal environmental directors and our tribal water contacts list.

Do you know whether separate email/announcement language, apart from the desk statement language below is planned?

Finally, is any additional stakeholder outreach or engagement planned, such as an information webinar or call? This seems more of a legal than a policy question, and I anticipate that I may receive some questions from the National Tribal Water Council and others on the issue.

Thanks again,

Karen Gude  
Tribal Program Coordinator  
U.S. EPA/Office of Water  
Phone: (202) 564-0831

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**From:** Chemerys, Ruth <[Chemerys.Ruth@epa.gov](mailto:Chemerys.Ruth@epa.gov)>  
**Sent:** Thursday, May 14, 2020 10:13 AM  
**To:** Gude, Karen <[Gude.Karen@epa.gov](mailto:Gude.Karen@epa.gov)>  
**Cc:** Hurlid, Kathy <[Hurlid.Kathy@epa.gov](mailto:Hurlid.Kathy@epa.gov)>  
**Subject:** Heads up for tribes on signature of FRN re consultation under ESA sec 7 on 404(g) program approval

Hi Karen:

Just wanted to let you know that we just learned that this Federal Register Notice to be signed imminently, possibly today. The notice is soliciting comment on whether EPA must consult under ESA section 7 when approving a state or tribe's application to assume the 404 program.

We will be doing notifications and posting a pre-pub version on Monday. Thus, you may want to notify your tribal network of the opportunity to comment at that time as well. Below is the desk statement and background from the comms strategy, and I can send the full comms strategy if you'd like.

Let us know if you have any questions.  
Thanks!  
Ruth

Desk statement

The EPA is seeking public comment on whether the Agency should reconsider its current position that consultation under Endangered Species Act (ESA) Section 7(a)(2) is not required when the EPA approves a State or Tribe's request to assume the Section 404 dredged and fill permit program under Section 404(h) of the Clean Water Act (CWA). Section 7 of the ESA applies to federal agency actions in which there is discretionary federal involvement or control. If the EPA determines that it has discretion when approving a state or tribal request to assume the Section 404 program, it may be required to consult with the U.S. Fish and Wildlife Service

(FWS) and the National Marine Fisheries Service (NMFS) under Section 7 of the Endangered Species Act.

For additional information and how to comment, please refer to the EPA's website at:

<https://www.epa.gov/cwa404g>

Background:

EPA is taking action to clarify the process of state and tribal assumption of the Section 404 permit program under the Clean Water Act (CWA). States have inquired whether the Agency's action of approving a state or tribe's assumption of the Section 404 program is a discretionary action that requires the EPA to consult under Section 7(a)(2) of the Endangered Species Act. The EPA is seeking public comment on whether approving a state or tribe's assumption is or is not a non-discretionary action.

*Ruth Chemerys*

EPA Office of Water

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<Draft ESA 404 FRN comms strategy 5-14-20.docx>